

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**THE BOEING COMPANY (SUCCESSOR TO
MCDONNELL DOUGLAS CORPORATION),**
Plaintiff-Appellant,

and

GENERAL DYNAMICS CORPORATION,
Plaintiff-Appellant,

v.

UNITED STATES,
Defendant-Appellee.

2007-5111, -5131

Appeals from the United States Court of Federal
Claims in case No. 91-CV-1204, Senior Judge Robert H.
Hodges, Jr.

Before RADER, *Chief Judge*, PROST and MOORE, *Circuit
Judges.*

PER CURIAM.

O R D E R

The Supreme Court vacated and remanded this case
to the Federal Circuit in its recent decision in *General*

Dynamics Corp. v. United States, 131 S. Ct. 1900 (2011), for consideration of the Government’s argument that it does not have an obligation to share its superior knowledge “with respect to ‘highly classified information,’” or “when (as was the case here) the agreement specifically identifies information that must be shared.” *Id.* at 1909-10. In addition, on remand, we must determine whether those issues “can safely be litigated without endangering state secrets.” *Id.* at 1910.

On June 30, 2011, the parties submitted a joint motion for entry of a scheduling order in this case for briefing of the remanded issues. The Government’s arguments, however, were never squarely addressed by the Court of Federal Claims in the first instance. In addition, the Supreme Court’s remand requires factual determinations most appropriately undertaken by the trial court.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The parties’ joint motion for entry of a scheduling order is denied.

(2) We remand to the Court of Federal Claims for further proceedings consistent with the Court’s opinion in *General Dynamics Corp. v. United States*.

FOR THE COURT

July 7, 2011

/s/ Jan Horbaly

Date

Jan Horbaly
Clerk

cc: Paul M. Smith, Esq.
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